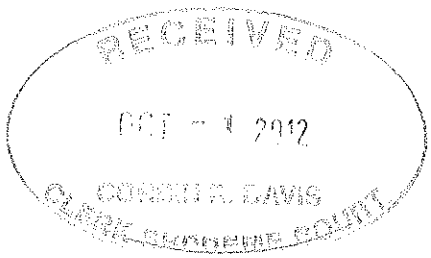
ADM File No. 2011-18

2011-18

September 26, 2012

Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909



Dear Supreme Court,

Fedor Mickhailovitch Dostoyevsky once remarked that "The degree of civilization in a society, can be judged by entering its prisons." That observation, I respectfully submit, should be considered to be equally applicable to Michigan's courtrooms.

The 10 most dangerous words in the English language were once considered to be, "Hi! I'm from the government and I'm here to help." Michigan's Supreme Court, however, using People v. Cobbs, 443 Mich 246 (1993), has reduced that number to 6, substituting "on the motion of a party" for "Hi!..." and ushered in to Michigan jurisprudence the once reviled "Star Chamber Court." The Court now proposes to extend Cobbs and adopt an amendment to its Court Rules that further codifies trickery and deceit, using People v. Cole, 491 Mich ____ (2012) to accomplish this dastardly deed. Several of the values seemingly inherent in the amendment ("fair process/notice") appear to have been reimagined to the point that they scarcely resemble their antecedents. In Cole, the Court appears to hold that the trial court must advise a defendant who is subject to lifetime monitoring of that requirement as part of the sentence during the plea "bargaining" proceeding. That presupposes the prosecutor and the lawyer representing the defendant perhaps had not done so already and the unwary defendant was being blind-sided with a condition of his/her "sentence" that might not have been part of plea "imaginary bargaining" negotiations conducted in the Star Chamber Court with the judges permission. I respectfully submit, "What's the point?"

In Michigan, there is absolutely no enforceable sentence or plea "bargain" to be had. A plea "bargain" is an absolute myth. The State's legal profession's own publication, the Prison's and Corrections Forum, January 2011, Volume 11, No. 1, clearly states, "Currently, the judge imposes the minimum [sentence] based on sentencing guidelines devised by the Legislature, but the [MDOC's Parole] Board is free to hold someone to their maximum." Notably, MCL 769.8 requires the sentencing judge to impose the statutory maximum in every case. Curiously, the judge, defense lawyer, prosecutor, and MDOC's parole and probation "experts" calculate the so-called "minimum" after considering "prior record variables" (how bad someone has been in the past) and "offense variables" (how bad the defendant was this time) to come up with a "time of imprisonment" penalty for the current errant behavior that is then subject to an "Oops! Ya all got it wrong!" veto by 2 unelected bureaucrats, a.ka., parole board members who, in effect, say "The judge can't be trusted." Even after the Court of Appeals devoted countless hours writing opinions to clarify "guidelines" interpretations, 2 unelected bureaucrats can then say, "Oh, well.

Try again later." Some judges could be trusted - but no one cared.

In People v. Moore, 62 Mich 496 (1886), Judge Morse observed about the "indeterminate sentencing" law, "This arbitrary power and authority over the liberty of another...cannot lawfully exist in a free country." Five years later, in People v. Cummings, 88 Mich 249 (1891) Judge Morse vilified the "indeterminate sentencing" law the legislature had passed and held it to be unconstitutional. That language echos in today's hollow halls of justice. Eleven years later, Judge Grant, in People v. Cook, 147 Mich 127, 132 (1907) observed about "indeterminate sentencing, "He is in prison for a definite time. Any release therefrom is a favor to him." People v. Cole purports to adopt those words (sub silentio) and apply them with equal force to the duty to inform a defendant of a need to monitored by the warden for a lifetime, only after he is in front of the sentencing judge. That seems a bit "late" to informed when the wheels of injustice have already laid waste and destroyed what if anything remains of the defendant's life, thanks to the restrictions on legal representation imposed by Const. 1963, Art. 9, § 29. Despite being a "sacred" cow because it is part of the State Constitution, the effects warned about 100 plus years ago are now ubiquitous. What is not realized is that Art. 4, § 45 only provided "permission" to the legislature (it is not a "mandate") to enact a law "providing" for indeterminate sentencing. Why doesn't any judge - or anyone else - tell a defendant about to be "pled out" and facing incarceration, "Your sentence will be the statutory maximum of (??) years; you will be eligible for parole after serving the (??) year minimum unless the parole board says otherwise; there is no right to parole; have a nice day."

I am a former U.S. Army Infantry Sergeant First Class. I and others like me devoted years of our lives preparing themselves and others to risk all to preserve the liberty of others if called upon to do so. I always believed ours was a "nation of laws, not of men, or money, or hocus pocus rhetoric." Was I horribly wrong? Allowing unelected bureaucrats to operate an unregulated "imprisonment for profit slush fund scam" - slush fund is the period between minimum and statutory maximum - is obscene and un-American. Star Chamber Courts were once regarded as "un-American" but they are now back in style. Does that mean honesty and integrity in our judges is now out of style?

The Court should not "tell" the defendant anything. The Court should "ask" the defendant if s/he has been informed at least two business days prior to today's appearance of the requirement to register. If the answer is "no" then the Court should be required to tell the defendant, "Today is your lucky day." and place on the record that the state and defense failed to comply with their respective responsibilities and the defendant will not be required to register...ever. Moreover, the defendant will be informed s/he will be discharged immediately upon serving the minimum sentence imposed by the court.

Thank you for this opportunity.

Respectfully,

Lawrence Evans